AMERICAN ARBITRATION ASSOCIATION
NO-FAULT/ACCIDENT CLAIMS

In the Matter of the Arbitration between

(Claimant)

v.

RUTGERS CASUALTY
INSURANCE COMPANY

_RESPONDENT_

(Claimant)

AAA CASE NO.: 18 Z 600 19894 03
INS. CO. CLAIMS NO.: 0373885
DRP NAME: John J. Fannan
NATURE OF DISPUTE: MEDICAL NECESSITY, PRE-CERTIFICATION AND FEE SCHEDULE

AWARD OF DISPUTE RESOLUTION PROFESSIONAL

1. THE UNDERSIGNED DISPUTE RESOLUTION PROFESSIONAL (DRP), designated by the American Arbitration Association under the Rules for the Arbitration of No-Fault Disputes in the State of New Jersey, adopted pursuant to the 1998 New Jersey “Automobile Insurance Cost Reduction Act” as governed by N.J.S.A. 39:6A-5, et. seq., and, I have been duly sworn and have considered such proofs and allegations as were submitted by the Parties. The Award is DETERMINED as follows:

Injured Person(s) hereinafter referred to as: The Patients EB & GL

1. Oral Hearings were held on: March 10, 2004

2. ALL PARTIES APPEARED at the oral hearing(s).

NO ONE appeared telephonically.

3. Claims in the Demand for Arbitration WERE amended at the oral hearing as permitted by the DRP (Amendments, if any, set forth below). STIPULATIONS were not made by the parties regarding the issues to be determined (Stipulations, if any, set forth below).

The claim of claimant AM Pain Care Acupuncture for Patient GL ($738.00) was amended to $227.34.

4. FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

I find the Patients were injured as the result of an automobile accident which occurred on March 29, 2003. I further find that the Patients were eligible to make claim for PIP benefits pursuant to the terms and conditions of a policy of automobile insurance issued by the respondent to EB.
Patient EB came under the care of Advanced Spinal Care Center on April 9, 2003 complaining of headaches, neck pain with radiating pain into the shoulders bilaterally as well as upper, mid and low back pain with radiating pain into the right leg as well as pain in the right elbow and left foot. A physical examination conducted at that time revealed muscle spasm, hypertonicity and tenderness in the upper trapezius and paraspinal musculature. Ranges of motion were noted to be decreased with pain and a number of orthopedic/neurologic tests administered produced positive results. Dr. Bonacusco formed the following diagnosis as to patient EB: cervical brachial radiculitis, lumbosacral radiculitis, deep myospasms, post-traumatic headaches and thoracic sprain/strain. The patient EB was placed a on a program of chiropractic care consisting of chiropractic manipulation, electric muscle stimulation, massage/hydrotherapy and traction with periodic re-evaluations. Patient EB continued to treat with Claimant Advanced Spinal Care Center through September 10, 2003. Advanced Spinal Care Center alleges there is due and owing as and for payment of treatments administered by them to patient EB $3,880.05 consisting of the following:

1. Dates of service 5/14/03 through 5/23/03 ($405.00) for improperly assessed 50% additional co-payment penalty for failure to properly pre-certify;
2. Date of service 6/20/03 ($2.55 for improper payment of 99214 (region);
3. Dates of service 7/1/03-7/30/03 ($757.50) representing improper adjustment of additional 50% co-payment penalty for failure to pre-certify;
4. Dates of service 8/1/03-9/3/03 ($2,275.00) and five dates of service 9/5/03-9/10/03 ($440.00) unpaid dates of service.

The patient GL came under the care of Advanced Spinal Care Center on 4/4/03 complaining of neck pain radiating into the shoulders bilaterally as well as upper, mid and low back pain with radiating pain into the buttocks. A physical examination noted muscle spasm, hypertonicity and tenderness upon palpation of the upper trapezius paraspinal musculature and ranges of motion of the cervical and dorsal lumbar spine were noted to be restricted with pain. A number of orthopedic/neurologic examinations performed produced positive results. Dr. Bonacusco formed the following diagnosis: cervical brachial radiculitis, lumbosacral radiculitis, deep myospasms and thoracic sprain/strain. The patient was placed on a program of chiropractic treatment consisting of chiropractic manipulation, electric muscle stimulation, massage/hydrotherapy and traction with periodic re-evaluations. Patient GL continued to treat with Advanced Spinal Care Center through December 29, 2003. Advanced Spinal Care Center alleges there is due and owing as and for payment of services rendered to patient GL $3,005.41 comprised of the following:

1. Dates of service 7/1/03 –7/29/03 ($435.41) for incorrectly applied 50% additional co-payment penalty based upon a failure to properly pre-certify;
2. Dates of service 8/6/03 –12/29/03 ($2,570.00) dates of service unpaid.

Additionally, during the course of his treatment with Advanced Spinal Care Center, Patient GL was referred by Dr. Stephens for acupuncture therapy to AM Pain Care
Acupuncture. GL received treatment there from 5/1/03-9/19/03 and it is alleged there is due and owing the sum of $227.34 for treatments rendered comprised of the following:

1. Dates of service 5/1/03 & 5/16/03 ($180.00) unpaid;
2. 7/10/03-9/19/03 ($47.34) representing incorrect reductions in amounts payable.

The respondent argues as to claims of Advanced Spinal Care Center, claimant GL was twice scheduled for chiropractic IMEs, with the earliest scheduled 8/6/03. GL failed to appear for either IME and therefore chiropractic benefits were terminated effective 8/6/03. It is further argued that Pre-Certification penalties were properly applied in that number of treatments exceeded the amount of treatments for which Pre-Certification was requested.

As to patient EB, respondent argues all Pre-Certification penalties were properly applied inasmuch as certain dates of service exceeded the amounts requested for Pre-Certification. Additionally, respondent notes that patient EB failed to appear initially for an 8/3/03 IME as was scheduled. Subsequently, patient did appear for an IME with Dr. Lacognata, a chiropractor, on September 3, 2003. Dr. Lacognata concluded the patient had achieved maximum medical improvement through chiropractic care and that further chiropractic was neither medically necessary nor reasonable.

Further, the respondent argues that all bills for AM Pain Care Acupuncture for treatment of patient GL were paid in accordance with usual, customary and reasonable billing considerations. It is also argued the respondent did not receive the billings of claimant AM Pain Care Acupuncture for dates of service 5/1/03 & 5/16/03.

A number of documents have been submitted for review and consideration:

- Demand for Arbitration;
- Medical bills (HCFA Forms);
- Assignments;
- Requests for Pre-Certification with fax headers and treatment plans attached;
- Reports of Advanced Spinal Care Center;
- Daily Patient Treatment Notes;
- SOAP Notes;
- Physical examination reports and records of AM Pain Care Acupuncture;
- Police report;
- PIP Applications;
- EOBs;
- PIP Payment Ledger;
- Report of Dr. Lacognata;
- Certification of AM Pain Care Acupuncture bookkeeper;
- Certifications of Services.
With respect to the issue as to whether the billings of AM Pain Care Acupuncture were properly submitted, the provider’s bookkeeper (Kathy Saunders) provided a statement that billings for dates of service 5/1/03 & 5/16/03 were mailed on or about June 9, 2003 to the respondent. Additionally, claimant AM Pain Care Acupuncture has provided HCFA Forms indicating they were signed on June 9, 2003. The respondent can only aver that it does not have copies of those bills in its file. Credibility of that averment is not contested. However, I find the statement of AM Pain Care Acupuncture’s bookkeeper in conjunction with the dated HCFAs to establish to a preponderance of the evidence that the billings were in fact mailed.

I find no medical evidence has been presented to challenge the medical necessity of the acupuncture treatments. I further find the reports and records submitted by AM Pain Care Acupuncture do establish to a preponderance of the evidence that treatments rendered by them on dates of service 5/1/03 & 5/16/03 were reasonable, medically necessary and for a condition or condition causally related to the subject accident. Therefore, the claim of AM Pain Care Acupuncture is awarded for those two dates of service in an amount of $180.00 reflecting application of the Daily Maximum Allowable Fee of $90.00 as set forth in N.J.A.C. 11:3-29.4(m). I note that a review of the billing submitted as well as the PIP Payment Ledger and EOBs does not reflect that patient GL received treatment from any other provider on those dates, therefore payment is awarded in the full amount.

Further, the EOB of the respondent for payment made to AM Pain Care Acupuncture on behalf of patient GL reflects a reduction in the amount payable of $47.34 for the following reason: “Allowance for this procedure was made at the usual, customary and reasonable amount for this geographical area.” Absolutely no evidence has been introduced which would explain or support the basis for that reduction, how the amount paid was calculated or why the provider was not entitled to be paid in accordance with the Daily Maximum Allowable Fee. I therefore find the reduction of $47.34 has not been demonstrated to be appropriate and return of same is awarded to claimant AM Pain Care Acupuncture.

Therefore, the claim of AM Pain Care Acupuncture is awarded in the amount of $227.34.

I also award interest to AM Pain Care Acupuncture in the amount of $5.99.

As to the claim of Advanced Spinal Care Center for patient GL, I find that a review of the Pre-Certification requests against the number of dates of service billed for the time period 7/1/03-7/29/03 indicates that dates of service 7/8/03 through 7/18/03 were in fact not pre-certified, inasmuch as they exceeded the number of treatments requested on 6/10/03 and predated the next request for Pre-Certification on 7/23/03. However, all other dates were properly pre-certified. I find for these dates of service the respondent applied an excess of $127.91 in Pre-Certification penalties and same is returned to the claimant Advanced Spinal Care.
With respect to dates of service 8/6/03-12/29/03, I find the reports and records submitted by the claimant Advanced Spinal Care Center do established to a preponderance of the evidence that the treatment rendered from 8/6/03 – 9/16/03 was reasonable, medically necessary and for a condition or condition causally related to the subject accident. The examination conducted on 8/22/03 requests Pre-Certification of twice weekly treatments for four weeks with re-evaluation in four weeks. Those 8 sessions expired on September 16, 2003. However, the next report entered into evidence is dated November 25, 2003. There is no report submitted dealing with dates between September 20, 2003 and November 25, 2003, except for the SOAP notes. A review of those notes clearly reflects the patient had reached a treatment plateau. After treatment to effectuate a cure or rehabilitation has ended and the patient’s condition has plateaued, medical expenses for palliative treatment may continue, but only to the extent that such expenses are deemed reasonable and necessary. The reasonableness and necessity of palliative expenses must be evaluated in the context of the quantum of pain involved, plaintiff’s tolerance of pain and the overall effect of the pain on plaintiff’s life. Perun v. Utica Mutual Insurance Company, 280 N.J. Super 280, 285-86 (Law Div. 1994). The services must be shown by competent medical testimony to be such as are reasonable and necessary for the particular patient, taking into consideration his individual condition and need. Howard v. Harwood’s Restaurant Company Rest. Co., 25 NJ 72 (1957). In determining what is reasonable and necessary, the “touchstone is not the (patient’s) desires or what he (sic) thinks is to be most beneficial. Rather it is what is shown by sufficient competent evidence to be reasonable and necessary to cure and relieve him (sic).” Squeo v. Comfort Control Corp., 99 NJ 588 (1995). Absolutely no competent medical evidence has been introduced to explain the medical necessity or reasonableness for treatments between 9/16/03 and 11/25/03, or which would indicate treatment during that time was anything other than purely palliative.

I find the reports and records submitted by claimant Advanced Spinal Care Center as to patient GL do establish to a preponderance of the evidence that treatment rendered only for the period between 8/6/03 & 9/16/03 was reasonable, medically necessary and for a condition or condition causally related to the subject accident. The billing for that period is $1,335.00. However, the respondent clearly had the right pursuant to New Jersey Statute (NJSA 39:6A-13) to conduct a physical examination of the patient, for which the patient failed to appear. No evidence is introduced which would suggest that patient objected to appearance for that examination. In fact, his non-appearance is wholly unexplained. NJAC 11:3-4.7(b)(3) permits a respondent to impose an additional co-payment penalty not to exceed 50% of the eligible charge for such failure, and I find that is applicable under these circumstances. Therefore, the claim for Advanced Spinal Care Center for treatment of patient GL for dates of service 8/6/03-9/16/03 is awarded in the amount of $667.50. Therefore, the total amount awarded to Advanced Spinal Care Center with respect to patient GL is $795.41.

As to the claim of Advanced Spinal Care Center on behalf of patient EB, I find that dates of service of service 5/14/03 through 5/23/03 were paid in full by the respondent and that the 50% compliance penalty was properly applied inasmuch as the number of dates of service exceeded the amount requested in Pre-Certification. The portion of the demand
of the claimant which seeks payment for those dates of service is denied. As to date of service 6/20/03, I find the respondent did in fact reimburse the claimant in accordance with the incorrect region fee schedule and the claimant is entitled to $2.55 for CPT Code 99214 on that date of service.

As to dates of service 7/1/03-7/30/03, I find the respondent incorrectly assessed a 50% additional co-payment penalty for failure to pre-certify dates of service 7/15/03-7/30/03, dates which I find were authorized. I do not find the treatment for those dates exceeded the numbers requested and I find an incorrect penalty in the amount of $360.00 was assessed. That amount is awarded to the claimant. With respect to dates of service 8/1/03-9/3/03, which were unpaid, I find the reports and records submitted by the claimant have established to a preponderance of the evidence that the treatments rendered on those dates of service were reasonable, medically necessary and for a condition or condition causally related to the subject accident and I find the eligible fee for those dates of service to be $1875.00. However, it is undisputed that the respondent requested and scheduled an IME of patient EB for 8/3/03, for which EB failed to appear. There is no indication that EB objected to appearance for that nor is his non-appearance in any way explained. For the reasons set forth hereinafore, the respondent is entitled to an additional co-payment penalty in the amount of 50% of the eligible charge for dates of service between the first scheduled IME and the IME for which the patient actually appeared. Therefore, the claim of the claimant for dates of service 8/1/03-9/3/03 is awarded in the amount of $937.50. Finally, with respect to dates of service 9/5/03-9/10/03, the reports and records of Advanced Spinal Care Center as well as the SOAP notes, also reflect a treatment plateau was reached by this patient. I do not find that competent medical evidence has been introduced which would suggest that treatment for those dates of service was anything other than purely palliative; on the contrary, the report of Dr. Lacognata suggests just the opposite, and I find that report to be credible. Therefore, the claim of claimant Advanced Spinal Care Center as to patient EB is awarded in the total amount of $1,300.05.

I also award interest to Advanced Spinal Care Center on behalf of patient GB in the amount of $99.00. I also award interest to Advanced Spinal Care Center on behalf of GL in the amount of $15.00.

I further find the claimants were successful and is entitled to an award of counsel fees. Counsel for the claimant AM Pain Care has submitted a Certification of Services wherein is sought counsel fees in the amount of $1,878.75 together with costs of $285.00. Counsel for the respondent has entered an objection to an award of counsel fees in this amount, arguing both the total number of hours billed (8.35) and the hourly billing rate ($225.00). Counsel for claimant Advanced Spinal Care Center has submitted a Certification of Services wherein is sought counsel fees in the amount of $2000.00 together with costs of $285.00. Again, counsel for the respondent has objected to entry of an award of counsel fees in this amount, citing opposition to both the total number of hours billed (10.0) as well as the hourly rate ($200.00) as excessive under the circumstances. I have reviewed the line item entries on the Certifications of Services, and not unmindful of the amounts at issue, and I award to counsel for AM Pain Care
Acupuncture the sum of $700.00 together with costs in the amount of $285.00. I award
to counsel for claimant Advanced Spinal Care Center the sum of $1000.00 together with
costs in the amount of $285.00. These amounts I find consonant with the amounts at issue
herein and consistent with the requisites of RPC 1.5 and consistent with the degree of
effort, expertise and experience required for a successful prosecution of this claim. I also
award each counsel costs in the of $285.00. I further find the award of counsel fees in
these amounts to be consistent with the mandates of the Court in Enright v. Lubow, 215

This matter was the subject of an oral hearing conducted on March 10, 2004. The
hearing was held open to afford the parties the opportunity to make additional
submission, and was declared closed of March 29, 2004.

5. MEDICAL EXPENSE BENEFITS:

<table>
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<tr>
<th>Provider</th>
<th>Amount Claimed</th>
<th>Amount Awarded</th>
<th>Payable to</th>
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<tr>
<td>Advanced Spinal Care Ctr. - GL</td>
<td>$3,005.41</td>
<td>$795.41</td>
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<td>AM Pain Care Acupuncture - GL</td>
<td>$227.34</td>
<td>$227.34</td>
<td>AM Pain Care Acupuncture</td>
</tr>
</tbody>
</table>

Explanations of the application of the medical fee schedule, deductibles, co-payments, or
other particular calculations of Amounts Awarded, are set forth below.

6. INCOME CONTINUATION BENEFITS: Not in Issue

7. ESSENTIAL SERVICES BENEFITS: Not in Issue

8. DEATH BENEFITS: Not in Issue

9. FUNERAL EXPENSE BENEFITS: Not in Issue

10. I find that the CLAIMANT did prevail, and I award the following

39:6A-5h.

(A) Other COSTS as follows: (payable to counsel of record for CLAIMANT unless
otherwise indicated):

Counsel for Advanced Spinal Care Center - $285.00
Counsel for AM Pain Care Acupuncture - $285.00

(B) ATTORNEYS FEES awarded in part as follows: (payable to counsel of record for
CLAIMANT unless otherwise indicated):
Counsel for Advanced Spinal Care Center - $1000.00
Counsel for AM Pain Care Acupuncture - $700.00

(B) INTEREST is as follows:
Advanced Spinal Care Center on behalf of patient GB in the amount of $99.00.
Advanced Spinal Care Center on behalf of GL in the amount of $15.00.
AM Pain Care Acupuncture in the amount of $5.99

This Award is in **FULL SATISFACTION** of all Claims submitted to this arbitration.

May 7, 2004  
Date  
John J. Fannan, Esq.